STANDARD RED CEDAR CHEST CO., INC., *v.* MONROE.

June 12, 1919.

[99 S. E. 589.]

1. Master and Servant (§ 96 (1)*)—Injuries to Minor Servant—Violation of Statute—Proximate Cause.—Where a boy under 14 was hired to work as assistant to the operator of a planer equipped with steel and iron wheels, cogs, knives, etc., to remove boards and shake them loose when clogged, in violation of Acts 1914, c. 164, and he was injured, his employment, in violation of the statute, with knowledge that he was under the prohibited age, was the proximate cause of his injury as a matter of law.

[Ed. Note.—For other cases, see 15 Va.-W. Va. Enc. Dig. 645; 17 Va.-W. Va. Enc. Dig. 643, 644.]

2. Appeal and Error (§ 1068 (3, 5)*)—Harmless Error—Instructions.—Where the appellate court can see from the entire record that under correct instructions no other verdict rightly could have been found, or that the party complaining could not have been prejudiced by the trial court's action in giving or refusing instructions, it will not reverse and set aside the verdict

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 600; 7 Va.-W. Va. Enc. Dig. 743.]

Error to Circuit Court of City of Lynchburg.

Motion by Johnson C. Monroe, by, etc., against the Standard Red Cedar Chest Company, Incorporated. Judgment for plaintiff and defendant brings error. Affirmed.

Harrison & Long, of Lynchburg, for plaintiff in error.

Duncan Drysdale and *Bradford Waters,* both of Lynchburg, for defendant in error.

WHITTLE, P. The defendant in error, an infant under the age of 14 years, to wit, of the age of 12 years, suing by his next friend, brought this motion against the plaintiff in error, the owner and operator of a factory for the manufacture of cedar chests, to recover damages for personal injuries suffered by him as an employee in defendant's factory.

[1] The motion was brought under an act of the General Assembly approved March 27, 1914, which, so far as pertinent to this case, provides as follows:

"Section 1. That * * * no child under the age of fourteen years shall be employed, permitted or suffered to work in any

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

factory, workshop, mine, mercantile establishment, laundry, bakery, brick or lumber yard. * * *"

"Sec. 6. Any owner, superintendent, overseer, foreman or manager, who shall knowingly employ or permit any child to be employed contrary to the provisions of this act, in any factory, workshop, mercantile establishment or laundry, with which he is connected, or any parent or guardian, who allows any such employment of his child or ward, shall upon conviction of such offense be fined not less than twenty-five dollars nor more than one hundred dollars. * * *

"Any employment contrary to the provisions of this act shall be prima facie evidence of guilt, both as to the employer and the parent or guardian of the child so employed."

The act further provides that the circuit or corporation court, upon petition, etc., for good cause shown may release a child between the ages of 12 and 14 years from the operation thereof. Acts 1914, p. 671.

The notice alleged the employment of the plaintiff by the defendant contrary to the provisions of the act; that the machinery in the factory was driven by steam power and electricity and was dangerous; that plaintiff was put to work by his employer at a dangerous machine, known as a "planer," equipped with steel and iron wheels, cogs, pinions, circular knives, and other dangerous agencies that revolved at a rapid rate of speed; that by reason of plaintiff's tender years and lack of skill and experience he was incapable of understanding and did not understand the dangers incident to working at and about the planer; that the defendant knew the dangerous character of the machine, but neglected to warn or instruct the plaintiff with respect to it; that after an employment of eight days' duration, during the temporary absence of the workman in charge of the planer, under whom plaintiff was working, the machine (not being in good order) became clogged or jammed, and the plaintiff, in his effort to remove the obstruction, had his hand caught in the machine, and all the fingers and part of the thumb of his right hand were cut off.

Issue was joined by the defendant on this notice, and, upon conflicting evidence, the jury returned a verdict for the plaintiff and assessed his damages at $1,250. The case is before us upon a writ of error to a judgment sustaining that verdict.

Section 2900 of the Code provides that—

"Any person injured by the violation of any statute may recover from the offender such damages as he may sustain by reason of the violation, although a penalty or forfeiture for such violation be thereby imposed, unless the same be expressly mentioned to be in lieu of such damages. And the damages so sus-

tained together with any penalty or forfeiture imposed for the violation of the statute, may be recovered in a single action of trespass on the case upon proper counts when the same person is entitled to both damages and penalty: Provided, that nothing herein contained shall affect the existing statutes of limitation applicable to the foregoing causes of action respectively."

The evidence shows that plaintiff was put to work by the defendant at the planer, his duty being to remove the boards from the planer and to shake them loose when they became clogged, and for that purpose his correct position was at the rear of the machine, while that of the workman in charge was at the front, where the boards were fed to the machine. At the time of the accident the head workman had absented himself temporarily from his post of duty, leaving the machine running, and during his absence it became clogged. The plaintiff endeavored to dislodge the boards in the usual way, but was unable to do so; and in the dilemma in which he was placed by the absence of the workman he went to the front of the machine, and in his effort to remove the boards his hand was caught in the machinery, and he received the injuries of which he complains.

It thus appears that plaintiff was about the master's business and in the line of his employment when injured, if not within the literal scope of it. To shield him from exposure to such dangers incident to his youth and inexperience was the obvious purpose of the act in absolutely prohibiting his employment and making it unlawful. From the evidence adduced (certainly from the viewpoint of a demurrer by the defendant to the evidence) the jury were warranted in finding that at the time of his employment the plaintiff was under the age of 14 years, and that the defendant knowingly employed or permitted him to be employed contrary to the express terms of the act. In addition to the controlling influence of the demurrer to the evidence rule, the act declares that any employment contrary to its provisions shall be prima facie evidence of the guilt of the employer. The question whether or not the employment of a child by the owner to work in his factory, with knowledge of the fact that he is within the prohibited age, is to be regarded per se as the proximate cause of an injury received by him in the course of such employment, is before us for the first time. In other jurisdictions, however, in such circumstances, under statutes substantially similar to our own, the prevailing opinion is that the unlawful hiring of a child within the prohibited age as matter of law constitutes proximate cause.

The reason for the rule is very clearly stated in Castell *v.* Pittsburg Vitrified Paving, etc., Co., 83 Kan. 533, 112 Pac. 145, as follows:

"The contention is also made that there was no evidence that the violation of the statute was the proximate cause of the plaintiff's injury. The jury were justified in finding, and must be deemed to have found, that the defendant unlawfully employed the plaintiff at an occupation that placed him in peril; * * * that what happened was one of the very things the statute was intended to prevent. Such findings established the necessary causal relation between the disobedience of the statute and the plaintiff's injury."

The following authorities are in accord with the above statement of rule: 48 L. R. A. (N. S.) 662, note; 21 Am. & Eng. Ency. L. (2d Ed.) 480, 482; Leathers *v.* Blackwell, etc., Tobacco Co., 144 N. C. 330, 57 S. E. 11, 9 L. R. A. (N. S.) 349; Starnes *v.* Albion Mfg. Co., 147 N. C. 556, 61 S. E. 525, 17 L. R. A. (N. S.) 602, 15 Ann. Cas. 470; Sterling *v.* Union Carbide Co., 142 Mich. 284, 105 N. W. 755; Syneszewski *v.* Schmidt, 153 Mich. 438, 116 N. W. 1107; Braasch *v.* Mich. Stove Co., 153 Mich. 652, 118 N. W. 366, 20 L. R. A. (N. S.) 500; Perry *v.* Tozer, 90 Minn. 431, 97 N. W. 137, 101 Am. St. Rep. 416; Chabot *v.* Pittsburg P. Glass Co., 259 Pa. 504, 103 Atl. 283; Norman *v.* Coal Co., 68 W. Va. 405, 69 S. E. 857, 31 L. R. A. (N. S.) 504; Griffith *v.* Am. Coal Co., 78 W. Va. 34, 88 S. E. 595; Swope *v.* Keystone Coal & Coke Co., 78 W. Va. 517, 89 S. E. 284, L. R. A. 1917A, 1128; Iron & Wire Co. *v.* Green, 108 Tenn. 161, 65 S. W. 399; Casperson *v.* Michaels, 142 Ky. 314, 134 S. W. 200; L., H. & St. L. Ry. *v.* Lyons, 155 Ky. 396, 159 S. W. 971, 48 L. R. A. (N. S.) 667; Sharon *v.* Winnebago Fur Co., 141 Wis. 185, 124 N. W. 299; Stetz *v.* Mayer Boot, etc., Co., 163 Wis. 151, 156 N. W. 971, Ann. Cas. 1918B, 675; Am. Car & F. Co. *v.* Armentrout, 214 Ill. 509, 73 N. E. 766; Inland Steel Co. *v.* Yedinak, 172 Ind. 423, 87 N. E. 229, 139 Am. St. Rep. 389; Koester *v.* Rochester Candy Works, 194 N. Y. 92, 87 N. E. 77, 19 L. R. A. (N. S.) 783, 16 Ann. Cas. 589; Glucina *v.* Goss Brick Co., 63 Wash. 401, 115 Pac. 843, 42 L. R. A. (N. S.) 624; Elk Cotton Mills *v.* Grant, 140 Ga. 727, 79 S. E. 836, 48 L. R. A. (N. S.) 656, Ann. Cas. 1912B, p. 803.

While the child labor statutes of the several states are not altogether uniform, the foregoing decisions recognize the fact that all have a common object, namely, to preserve the lives and limbs of children, and they steadfastly adhere to the underlying principle that, where a child is knowingly employed contrary to the provisions of the statute and is injured in such employment, the employer is guilty of actionable negligence as matter of law. In other words, the unlawful hiring constitutes the causal connection between the violation of the act and the injury complained of.

[2] Exception was taken by the defendant to certain instruc-

tions granted by the court at the request of the plaintiff. The case, we think, comes within the influence of the well-settled rule in this jurisdiction that, where the court can see from the entire record that under correct instructions no other verdict could have been rightly found, or that the party complaining could not have been prejudiced by the action of the trial court in giving or refusing instructions, it will not reverse the judgment and set aside the verdict. Burks' Pl. & Pr. § 267; Moore *v.* B. & O. R. Co., 103 Va. 189, 48 S. E. 887; Neal & Binford *v.* Taylor, 106 Va. 651, 662, 56 S. E. 590; Fields *v.* Virginian Ry. Co., 114 Va. 558, 77 S. E. 501; Adams Express Co. *v.* Allendale, 116 Va. 1, 81 S. E. 42, Ann. Cas. 1916D, 894; Wood v. Jeffries, 117 Va. 193, 83 S. E. 1074; Straus *v.* Fahed, 117 Va. 633, 85 S. E. 969.

We find no error in the judgment, and it must be affirmed.

Affirmed.

Note.

Injury to Child While Acting Outside of Scope of Employment.—It has been held in several cases that the fact that at the time of his injury a child, employed in violation of statute, was acting outside of the scope of his employment does not release the master from liability. See Frank Unnewehr Co. *v.* Standard L., etc., Ins. Co., 176 Fed. 16, 99 C. C. A. 490; Strafford *v.* Republic Iron Co., 238 Ill. 371, 87 N. E. 358, 128 Am. St. Rep. 129; Casperson *v.* Michaels, 142 Ky. 314, 134 S. W. 200; Starnes *v.* Albion Mfg. Co., 147 N. C. 556, 61 S E. 525, 17 L. R. A. (N. S.) 602; Stehle *v.* Jaeger Automatic Mach Co., 225 Pa. St. 348, 74 Atl. 215, 133 Am. St. Rep. 884; Ornamenal Iron, etc., Co. *v.* Green, 108 Tenn. 161, 65 S. W. 399.

Thus in Starnes *v.* Albion Mfg. Co., 147 N. C. 556, 61 S. E. 525, 17 L. R. A., N. S., 602, it appeared a child employed in a factory, when injured by a machine, was not actually performing the duties to which he had been assigned, but had gone to another floor on an errand of his own. It was held that this did not prevent his employment, contrary to the provisions of a statute, from being the proximate cause of the injury. The court said: "Under such circumstances, there are respectable courts which hold that the injury is not the proximate result of a violation of the statute, because not received in performing the work the child was assigned to do, and that therefore the employer is not liable. We are not impressed with the persuasive authority of those precedents, and are not inclined to follow them. To do so would, in our opinion, unduly restrict the liability of the employer, and would be contrary to the evident intention of the legislature. The act was designed not only to protect the health, but the safety, of children of tender age, from the indiscretion and carelessness characteristic of immature years."

In Ornamental Iron, etc., Co. *v.* Green, 108 Tenn. 161, 65 S. W. 399, it appeared that a boy, employed by the defendant company, in violation of statute, was injured by some panels of iron fence which had been stacked up, falling upon him. The contention of the plaintiff was that he was passing the stock of iron fence on his way to deliver a message to another employee of defendant, under the directions of his superior, when he accidentally stumbled against the panels of fence and the pile toppled over on him. The defendant's

contention was that the plaintiff went to the place where he was hurt without orders and not on any matters connected with his employment, and was playing with the stack of fence panels when he lost his balance, fell backward and drew them down upon him. On the trial the defendant requested the court to instruct the jury that if the injury occurred to plaintiff while not engaged in and about any work for defendant, but while playing with the panels of fence, he could not recover. The court held that this request was properly denied, and that, even upon defendant's theory, it was liable, for the reason that the employment was a violation of the statute, and that every injury resulting from such employment is actionable.

In Stehle *v.* Jaeger Automatic Machine Co., 225 Pa. 348, 74 Atl. 215, 133 Am. St. Rep. 884, it was held that where a child is employed in violation of statute, the master cannot escape responsibility for an injury to him by showing that when he received it he was doing an act in a negligent manner which he had been ordered not to do. The court said: "When a child has been employed in violation of law and is injured in the place where he is employed, to allow the employer to escape liability because the injury resulted from the imprudence or negligence of the child would be to defeat the purpose of the law and render it absolutely futile. It was because a child under fourteen years of age is likely to be imprudent and negligent, and is therefore exposed to greater danger to himself and others as well, that his employment in industrial establishments is forbidden. So it is never a question of risk of employment or of contributory negligence. The fact of plaintiff's employment in an industrial establishment was in itself sufficient evidence to warrant an inference of the defendant's negligence, regardless of the nature and character of the work assigned him. With defendant's negligence established, but one question remained: Was this negligence of the defendant the proximate cause of the plaintiff's injury? It was, if incidental to the employment in a way that showed causal connection. Clearly, the accident would not have happened but for the plaintiff's illegal employment. If it happened immediately and directly because the boy did something in a negligent manner which he was not ordered to do, such circumstance cannot be considered the proximate cause, since it was the danger of just such occurrences through indiscretion that moved the legislature to forbid the employment of children, and the defendant was bound to have respect to this danger and not set the law at defiance. If the negligent act of the defendant in employing the plaintiff induced or offered opportunity for the subsequent act of the latter, and if his act was of a character common to youthful indiscretion, not only would causal connection be shown, but the law would refer the injury to the original wrong as its natural and probable cause, notwithstanding the intervening agency between that wrong and the injury."

In Strafford *v.* Republic Iron Co., 238 Ill. 371, 87 N. E. 358, 128 Am. St. Rep. 129, it was held that one who employs a child in willful violation of a statute forbidding the employment of children cannot escape responsibility for injuries to the child by showing that he left the work given him to perform and negligently undertook to do something else which resulted in the injury. The court said: "If appellant thought it had set appellee to perform work he could safely perform, and had forbidden him to perform other work thought to be dangerous to him, it was bound, at its peril, to see to it that appellee did not attempt to engage in a forbidden line.

Appellant was bound to know that on account of appellee's tender years he was not capable of a proper appreciation of danger, and was also bound to know that on account of his immaturity he was incapable of a proper comprehension of the necessity for obedience to orders of those in authority, and, under such circumstances, if it chose to violate the law by employing him, it assumed the burden of protecting him against his own negligence while engaged in such employment."

In Casperson *v.* Michaels, 142 Ky. 314, 134 S. W. 200, it was held that it is no defense in a suit for injury to a child employed at a laundry mangle in violation of statute, while warming her hands on the revolving sylinder, that she was injured by a part of the mangle at which she is not expected to work, and while not at work.

Injury While Going or Coming to Work.—Under the Kentucky statute making it unlawful to employ any child less than 14 years old in a mine, an infant, employed in a mine in violation of the statute, can recover damages sustained in consequence of its violation, and whether the injury occurred when the boy was at his place in the mine, or going or coming to work, was immaterial. Smith *v.* National Coal & Iron Co., 135 Ky. 280, 117 S. W. 280.

Necessity That Immaturity of Child Contribute to Injury.—In Casteel *v.* Pittsburg Vitrified Paving, etc., Brick Co., 83 Kan. 533, 112 Pac. 145, the court said: "In Roberts *v.* Taylor, 31 Ont. 10, it is held in effect that the violation of the statute is not shown to be the proximate cause of the injury unless there is proof that the immaturity of the child contributed to the injury. We think this too rigorous a requirement. There is always at least this much connection between the youth of the employee and his injury—if he had been older he might have refused the dangerous employment."

B. S.